

ORDINANCE NO. 16-1599

**ORDINANCE OF THE PEOPLE OF THE CITY OF
CARSON, CALIFORNIA APPROVING A TAX ON
CANNABIS RELATED BUSINESS ACTIVITIES BY
ADDING CHAPTER 13 (CANNABIS TAX) TO ARTICLE VI
(TAXES AND LICENSES) OF THE CARSON MUNICIPAL
CODE**

WHEREAS, if in the future cannabis business activities are permitted in Carson by either a future Carson City Council, or the voters of Carson through a future ballot measure, then the Carson City Council desires that a tax be in place and imposed on any such future cannabis business activities; and

WHEREAS, pursuant to subdivision (b) of Section 2 of Article XIII C of the California Constitution and Section 53720 et. seq. of the Government Code the City Council is authorized to impose a general tax upon submission of such general tax to the voters of the City and approval by a majority of the voters voting on the issue, at an election consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, in 1996 the California voters approved Proposition 215, the Compassionate Use Act, codified as Health and Safety Code Section 11362.5, to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes; and

WHEREAS, in 2003 the California legislature enacted Senate Bill 420, the Medical Marijuana Program Act, codified as Health and Safety Code Section 11362.7, *et seq.*, and as later amended, to clarify the scope of the Compassionate Use Act of 1996 relating to the possession and cultivation of cannabis for medical purpose, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, in 2005 the California Board of Equalization began issuing seller's permits for sales consisting only of medical cannabis; and

WHEREAS, in 2015, the California legislature enacted the Medical Marijuana Regulation and Safety Act ("MMRSA") (AB 243, AB 266, and SB 643) to establish a framework for regulating medical cannabis; and

WHEREAS, the U.S. House of Representatives has voted to stop federal law enforcement from interfering with medical cannabis operations in the various states which have decriminalized and/or authorized such operations; and

WHEREAS, Business & Professions Code section 19320(d) provides that local jurisdictions retain the power to assess fees and taxes, as applicable, on medical cannabis operations that are licensed pursuant to MMRSA and the business activities of those licensees.

WHEREAS, on June 30, 2016, a statewide ballot measure to legalize, regulate and tax nonmedical cannabis, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”), qualified to appear on the November 8, 2016 statewide ballot, and if this statewide ballot measure passes then the cultivation, sale, manufacture, use and possession of nonmedical cannabis will be legal under California state law; and

WHEREAS, MMRSA and AUMA does not preempt local taxation of marijuana operations; and

WHEREAS, presently the City has no local tax on either medical cannabis operations or nonmedical cannabis operations; and

WHEREAS, the City Council estimates that the City could collect between \$500,000 to approximately \$3.5 million in local sales tax revenue annually; and

WHEREAS, the City Council finds that taxation of cannabis and cannabis products can generate the revenue needed by the City to ensure that its citizens and visitors are safe and that cannabis operations comply with the City’s standards; and

WHEREAS, the City Council further finds that tax revenue from cannabis operations can provide funds for additional City services to protect the general health and welfare of the citizens of the City of Carson.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF CARSON, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 13 (CANNABIS TAX) IS HEREBY ADDED TO ARTICLE VI (TAXES AND LICENSES) OF THE CARSON MUNICIPAL CODE AS FOLLOWS:

CHAPTER 3.40 CANNABIS TAX

Section 61300. Definitions.

Section 61310. Tax.

Section 61320. Operation.

Section 61330. Returns and Remittances.

Section 61340. Failure to Pay Tax.

Section 61350. Refunds.

Section 61360. Enforcement.

Section 61370. Debts; Deficiencies; Determinations; Hearings.

Section 61300. Definitions.

The following definitions apply to this chapter unless the context clearly denotes otherwise.

- A. "Cannabis" has the same definition as provided for in Bus. & Prof. Code § 19300.5(f) for the term "cannabis," and as may be amended.
- B. "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- C. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- D. "Cultivation site" means any facility or location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities.
- E. "Director" means the Carson Director of Community and Economic Development, including his or her designee, or such person as may be appointed by the City Council.
- F. "Finance Director" shall mean the Director of Finance of the City of Carson and her/his designee.
- G. "Location" means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area. Where contiguous parcels are under common ownership or control, such contiguous parcels shall be counted as a single "location." For purposes of this chapter "premises" shall have the same meaning as "location."
- H. "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or re-labels its container.
- I. "Manufacturer 1" means a manufacturer who manufactures cannabis products using nonvolatile solvents, or no solvents.

- J. "Manufacturer 2" means a manufacturer who manufactures cannabis products using volatile solvents.
- K. "Marijuana" has the same definition as provided in this chapter for the term "cannabis."
- L. "Medical cannabis" means cannabis used for medical purposes in accordance with the Compassionate Use Act (Health and Safety Code section 11362.5), the Medical Marijuana Program Act (Health and Safety Code sections 11362.7 et seq.), and the Medical Marijuana Regulation and Safety Act of 2015.
- M. "Medical cannabis dispensary" shall have the same meaning as Section 19300.5(n) of the Business & Professions Code.
- N. "Minor" means a person under eighteen (18) years of age.
- O. "Nursery" means an operation that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- P. "Operation" means an activity permitted by this chapter, including the retail distribution, cultivation, manufacture, or testing of cannabis and cannabis products.
- Q. "Permit" means a regulatory license issued pursuant to this chapter, and such permit constitutes a "local permit, license, or other authorization" as used in Bus. & Prof. Code § 19320(a).
- R. "Person" means any natural person, firm, corporation, partnership, club, or any association or combination of natural persons, whether acting by themselves or through any servant, agent or employee.
- S. "Proceeds" means total revenue and/or money received through the sale of goods and/or services before any deductions or allowances (e.g., rent, cost of goods sold, taxes).
- T. "Retailer" means an operation for the retail sale and delivery of cannabis or cannabis products to customers.
- U. "Space utilized as cultivation area" shall mean any space or ground, floor or other surface area (whether horizontal or vertical) which is used during the cannabis germination, seedling, vegetative, pre-flowering, flowering and harvesting phases, including without limitation any space used for activities such as growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, curing or drying cannabis or any such space used for storing any products, supplies or equipment related to any such activities, no matter where such storage may take place or such storage space may be located.

- V. "Term" means a calendar month in regards to the monthly taxation of proceeds from an operation for the manufacture or testing of cannabis; and, means the fiscal year in regards to the annual taxation of the space utilized as cultivation area for cannabis.
- W. "Testing" means to perform tests on cannabis or cannabis products pursuant to a valid certificate of accreditation from the State of California for such operations.

Section 61310. Tax.

- A. Cannabis Cultivation Tax. Every person cultivating cannabis in the City, either pursuant to this Code or otherwise, and regardless of whether such operation has a valid permit pursuant to this Code, shall pay an annual maximum tax of twenty-five dollars (\$25) per square foot for space utilized as cultivation area. Taxes imposed on cultivation area shall be adjusted annually on July 1 after the date of imposition, and then July 1 of each succeeding year based on the Consumer Price Index ("CPI") for all urban consumers in the Los Angeles-Riverside-Orange County areas as published by the United States Government Bureau of Labor Statistics; however, no adjustment shall decrease any tax imposed by this chapter, unless approved by the City Council.
- B. Cannabis Operations Tax. Every person engaged in conducting an operation for the retail or wholesale distribution, cultivation, manufacture, transportation (including delivery), or testing of cannabis, either pursuant to the Carson Municipal Code or otherwise, and regardless of whether such operation has a valid permit pursuant to the Carson Municipal Code, shall pay a maximum cannabis tax of 18% of proceeds or fractional part thereof.

Section 61320. Operation.

- A. Failure to pay the taxes set forth in this chapter shall be subject to penalties, interest charges, and determinations of tax due as the City Council may establish and the City may use any or all other enforcement remedies provided for in this Code, or pursuant to state law.
- B. The City Council may impose the tax authorized by this chapter at a lower rate and may establish exemptions, incentives, or other reductions, and penalties and interest charges or determinations of tax due for failure to pay the tax in a timely manner, as otherwise allowed by Code or California law. No action by the Council under this Section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this chapter.
- C. The payment of the tax required pursuant to this chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter shall be construed to authorize cannabis operations.

- D. Taxes provided for hereunder are not sales or use taxes and shall not be calculated or assessed as such. The taxes shall not be separately identified or otherwise specifically assessed or charged to any individual member, consumer or customer; rather, the taxes are imposed upon the cannabis operation.
- E. The Finance Director shall promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the tax imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

Section 61330. Returns and Remittances.

The Tax shall be due and payable as follows:

- A. Each person owing Tax, on or before the last business day of each term as established by the Finance Director, shall prepare a tax return to the Finance Director of the total proceeds, and the amount of Tax owed for the preceding term. At the time the Tax return is filed, the full amount of the Tax owed for the preceding term shall be remitted to the City.
- B. All tax returns shall be completed on forms provided by the Finance Director.
- C. Tax returns and payments for all outstanding taxes owed the city are immediately due the Finance Director upon cessation of business for any reason.
- D. Whenever any payment, statement, report, request or other communication received by the Finance Director is received after the time prescribed by this section for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this section for the receipt thereof, or whenever the Finance Director is furnished substantial proof that the payment, statement, report, request, or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the Finance Director may regard such payment, statement, report, request, or other communication as having been timely received. If the due day falls on Friday, Saturday, Sunday, or a federal holiday, the due day shall be the last regular business day on which the City Hall is open to the public prior to the due date.
- E. Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not paid on or before the due date specified by this section.
- F. The Finance Director is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

Section 61340. Failure to Pay Tax.

Any person who fails or refuses to pay any tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:

- A. A penalty equal to twenty-five percent of the amount of the Tax in addition to the amount of the Tax, plus interest on the unpaid Tax calculated from the due date of the Tax at a rate established by resolution of the City Council; and, an additional penalty equal to twenty-five percent of the amount of the Tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid Tax and interest on the unpaid penalties calculated at the rate established by resolution of the City Council.
- B. Whenever a check is submitted in payment of a Tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the Tax amount due plus penalties and interest as provided for in this section plus any amount allowed under state law.
- C. The Tax due shall be that amount due and payable from the operative date of this chapter.
- D. The Finance Director may waive the first and second penalties of twenty-five percent each imposed upon any person if:
 1. The person provides evidence satisfactory to the Finance Director that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the city prior to applying to the Finance Director for a waiver.
 2. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four month period for taxation of proceeds, and only once during any five (5) year period for taxation of space utilized as cultivation area for cultivation of cannabis.

Section 61350. Refunds.

- A. No refund shall be made of any Tax collected pursuant to this chapter, except as provided in this Section.
- B. No refund of any Tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of an operation.
- C. Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against cannabis Taxes for the next term.

- D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, such amount may be refunded to the claimant who paid the Tax provided that a written claim for refund is filed with the Finance Director.
- E. The Finance Director shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant therefor refuses to allow such examination of claimant's books and business records after request by the Finance Director to do so.
- F. In the event that the Tax was erroneously paid and the error is attributable to the city, the entire amount of the Tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.
- G. The Finance Director shall initiate a refund of any Tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a city audit of Tax receipts. In the event that the Tax was erroneously paid and the error is attributable to the city, the entire amount of the Tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

Section 61360. Enforcement.

- A. It shall be the duty of the Finance Director to enforce each and all of the provisions of this chapter.
- B. For purposes of administration and enforcement of this chapter generally, the Finance Director, with the assistance of the City Attorney, may from time to time promulgate administrative rules and regulations.
- C. The Finance Director shall have the power to audit and examine all books and records of operations as well as persons engaged in the conducting of an operation, including both state and federal income tax returns, California sales tax returns, logs, receipts, bank records, or other evidence documenting the gross receipts of the operation, or persons engaged in the conduct of an operation, for the purpose of ascertaining the amount of Tax, if any, required to be paid by the provisions of this chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such operations or person, after written demand by the Finance Director, refuses to make available for audit, examination or verification such books, records, or equipment as the Finance Director requests, the Finance Director may, after full consideration of all information within the Finance Director's knowledge concerning the operation and activities of the person so refusing, make a determination of

tax due in the manner provided in Section 3.40.080 of this chapter.

- D. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.
- E. Any person violating any of the provisions of this chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring permits from the City as provided for in this chapter, shall be deemed guilty of a misdemeanor.

Section 61361- Debts; Deficiencies; Determinations; Hearings.

- A. The amount of any tax, penalties, and interest imposed by the provisions of this chapter shall be deemed a debt to the city and any person conducting an operation without also making payment to the city of the taxes imposed by this chapter shall be liable in an action in the name of the city in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such operation.
- B. If the Finance Director is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, the Finance Director may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in an operation, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.
- C. Under any of the following circumstances, the Finance Director may make and give notice of a determination of the amount of tax owed by a person under this chapter:
 - 1. If the person has not filed any statement or return required under the provisions of this chapter.
 - 2. If the person has not paid any tax due under the provisions of this chapter.
 - 3. If the person has not, after demand by the Finance Director, filed a corrected statement or return, or furnished to the Finance Director adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this chapter.
 - 4. If the Finance Director determines that the nonpayment of any tax due under this

chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.

5. The notice of determination shall separately set forth the amount of any tax known by the Finance Director to be due or estimated by the Finance Director, after consideration of all information within the Finance Director's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of determination.
 6. The notice of determination shall be served upon the person either by handing it to him or her personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business appearing on the face of the business tax certificate issued under this Code or to such other address as he or she shall register with the Finance Director for the purpose of receiving notices provided under this chapter; or, should the person have no business tax certificate issued and should the person have no address registered with the Finance Director for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.
- D. Within ten days after the date of service of a determination of the amount of tax owed by a person under this chapter, the person may apply in writing to the Finance Director for a hearing on the determination. If application for a hearing before the City is not timely made, the tax assessed by the Finance Director shall become final. The procedures for such a hearing shall be conducted as required by law and as follows:
1. The City Council delegates its authority to conduct such a hearing on the determination to an independent hearing officer. The compensation of the hearing officer shall not depend on any particular outcome of the appeal. The hearing officer shall have full authority and duty to preside over the hearing on the determination in the manner set forth herein and as required by law.
 2. Within 30 days of the receipt of any such application for hearing, the Finance Director shall cause the matter to be set for hearing before the independent hearing officer, unless a later date is agreed to by the Finance Director and the person requesting the hearing.
 3. Notice of the hearing shall be given by the Finance Director to the person requesting the hearing not later than five days prior to the date of the hearing. For good cause, the hearing officer may continue the administrative hearing from time to time. At the hearing the applicant may appear and offer evidence to show why the determination as made by the Finance Director should not be confirmed and fixed as the tax due. In conducting the hearing, the hearing officer shall not be limited by the technical rules of evidence. Failure of the person who applied for a hearing on the determination to

appear shall not affect the validity of the proceedings or order issued thereon.

4. Upon conclusion of the hearing, or no later than 10 days after the conclusion of the hearing, the hearing officer shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in this chapter for giving notice of determination, and the hearing officer shall submit its decision and the record to the City Clerk. The decision of the hearing officer shall be final.

SECTION 2. EFFECTIVE DATE.

If a majority of the voters of the City of Carson voting at the General Municipal Election of November 8, 2016 vote in favor of this Ordinance, then this Ordinance shall become a valid and binding ordinance of the City of Carson, and shall be considered as adopted upon the date that the vote is declared by the City Council of the City of Carson, and this Ordinance shall go into effect ten (10) days after that date, pursuant to Election Code section 9217.

SECTION 3. CITY COUNCIL AUTHORITY TO AMEND

This is a City Council sponsored initiative Ordinance which otherwise would only be subject to amendment by the voters of the City of Carson. However, pursuant to Section 9217 of the California Elections Code, the City Council expressly reserves the right and authority to amend the Ordinance to further the purposes and intent of the Ordinance (including but not limited to amendment for more efficient administration as determined by the City Council) in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

SECTION 4. SEVERABILITY.

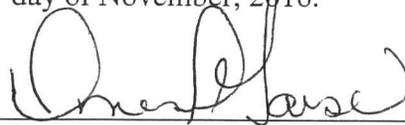
If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 5. EFFECTIVE DATE.

After its adoption by the voters, this Ordinance shall be in full force and effect ten (10) days after the vote is declared by the City Council of the City of Carson, pursuant to the provisions of Election Code §§ 9217 and 15400 and as provided by law.

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Donesia L. Gause, City Clerk of the City of Carson, California, do hereby attest to and certify that the above Ordinance No. 16-1599 was Passed, Approved, and Adopted by the People of the City of Carson, California, voting on the 8th day of November, 2016.



Donesia L. Gause, CMC
City Clerk, City of Carson